IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28452 of 2007(K)

CMA.32/2006 of ADDL.SUB COURT, IRINJALAKUDA
OS.249/2002 of MUNSIFF COURT, KODUNGALLUR
.....

PETITIONER:

ELBY VINCENT,
AGED 40, W/O. PAINADATH VINCENT,
PONGAM DESOM,KORATTI KIZHAKKUMMURI VILLAGE
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENT:

ASHRAF,
S/O.EDAVAZHIPURATH ABDU,
CHAMAKKALA DESOM,
EDATHIRINJI VILLAGE, KODUNGALLUR TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 28452 OF 2007

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Dated this the 25th day of September, 2007.

J U D G M E N T

This writ petition is preferred challenging the order of the learned Sub Judge, Irinjalakuda in CMA 32/06. She is the wife of the 2nd defendant in the suit who is arrayed as D3 in the case. Summons was taken out to her residential house on four occasions and it could not be personally served, paper publication was ordered and subsequently the suit was decreed exparte. After a period of two and half years the 3rd defendant has come forward with a prayer to set aside the exparte decree on the ground of non-serving of summons. The Court below found that there is some force in the contention of the decree holder that the non-service of summons personally on her may be due to deliberate act to avoid receipt of summons. The Court also found that the address given by her in the petition for setting aside the exparte decree and the address shown against her name as the 3rd defendant are one and the same and therefore there

is considerable force in the contention of the decree holder. The 2nd defendant is none other than her husband. He had also chosen to remain exparte. Now it is attempted to be projected that they were not on cordial terms. The procedure contemplated under Order 5 of the CPC had been complied with by the Court below. When a personal service could not be effected then the Code empowers the Court to order service under Order 5 Rule 20 of the CPC by substituted services and one of the modes known is by paper publication. So whatever is possible under Order 5 Rule 20 has been complied with and service has been effected by publication and even then the 3rd defendant did not appear before Court. The case that D2 and D3 had fallen apart also cannot be pleaded at this stage. Admittedly, the 2nd defendant was proprietor of a chitty company and an amount was due from him to the plaintiff. Taking into consideration the entire factual matrix both the courts below appreciated the evidence in the proper perspective and dismissed the application for setting aside the exparte order. I do not find

any perversity, illegality or irregularity in the said orders passed by the Court below and therefore this writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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